

REMARKS

Claims 1-19 and 23-27 were pending in the above-captioned patent application prior to this amendment. Claims 20-22 were previously canceled. Claims 1 and 13 are amended herein.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102

The Examiner rejected claims 1, 3-7, 12 and 23 as being unpatentable under 35 U.S.C. §102(b). The Examiner relied upon Henley et al. WO 01/37922 A2 (hereinafter Henley) to support this rejection. In the Examiner's rejection, the Examiner asserted in part that "Henley teaches . . . a wound dressing member (602, 618) made generally of a non-porous material (film (602) is non-porous) having a plurality of holes (interstices in porous packing (618))."

Anticipation exists only if all the elements of the claimed invention are present in a product or process disclosed, expressly or inherently, in a single prior art reference. *Hazeltine Corp. v. RCA Corp.*, 468 U.S. 1228 (1984). Thus, a reference does not anticipate a claim if the claim contains any limitation that is neither literally nor inherently present in that reference.

Claim 1 is amended to recite "a cover configured for placement over the wound dressing member to seal about the wound and create a sealed environment between the wound and the cover in which a negative pressure can be established." Henley does not disclose or suggest a vacuum bandage system including such a cover as well as both "a wound dressing member made of a generally non-porous material" and "a wound insert . . . being made of a material which is not porous or foam-like." Accordingly, independent claim 1 is not anticipated by Henley because Henley does not include all of the limitations of claim 1. As such, withdrawal of the 35 U.S.C. §102(b) rejection of claim 1 based on Henley, as well as claims 3-7 and 23, depending either directly or indirectly from claim 1, is respectfully requested.

Claim 12 is amended herein to require that the thin, flexible member of the wound insert includes "bores through the body extending from the top surface to the bottom surface" as well as "bores through the body extending from one side surface to another." Henley does not

disclose or suggest an insert having such bores. In particular, the bandage 10 shown in FIG. 7 of U.S. Patent No. 6,685,681 to Lockwood (incorporated by reference in Henley) includes a wound dressing member 20 and a cover 52 to cover the channels 28, 30 of the wound dressing member 20. The cover 52 includes a hole 51, as shown in FIG. 3. However, such hole 51 does not extend from the top surface of the cover 52 to the wound contacting surface 22 of the member 20. Furthermore, the wound dressing member 20 and the cover 52 do not cooperate to define any such a plurality of bores which extend from the top surface of the cover 52 to the wound contacting surface 22 of the member 22. Accordingly, Henley does not disclose or suggest a wound insert having “bores through the body extending from the top surface to the bottom surface” as well as “bores through the body extending from one side surface to another.” As such, independent claim 12 is not anticipated by Henley because Henley does not include all of the limitations of claim 12. As such, withdrawal of the 35 U.S.C. §102(b) rejection of claim 12 based on Henley is respectfully requested.

The Examiner rejected claims 1 and 27 as being unpatentable under 35 U.S.C. §102(b). The Examiner relied upon La Mere et al. U.S. Patent No. 2,338,339 (hereinafter La Mere) to support this rejection.

As noted above, claim 1 is amended herein to recite “a cover configured for placement over the wound dressing member to seal about the wound and create a sealed environment between the wound and the cover in which a negative pressure can be established.” La Mere does not disclose or suggest any such cover. The massaging vibrator of La Mere does not include any such cover to seal about a wound. Rather, the vibrator is specifically intended to be moved around a patient to massage an area of a patient and is not intended to be sealed in any one position on a patient. Accordingly, independent claim 1 is not anticipated by La Mere because La Mere does not include all of the limitations of claim 1. As such, withdrawal of the 35 U.S.C. §102(b) rejection of claim 1 based on La Mere, as well as claim 27 depending directly from claim 1 is respectfully requested.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

The Examiner rejected claims 2, 9-11, 13-15, 19, 24, 25, 28, and 29 as being unpatentable under 35 U.S.C. §103(a). The Examiner relied upon Henley to support this rejection.

In making this rejection, the Examiner stated that “Henley does not disclose expressly the claimed sizes and shapes of the absorbent insert. Mere changes in size or shape are not sufficient to patentably distinguish an invention over the prior art absent a showing of criticality.” The Examiner further stated that “Henley incorporates by reference the ‘352 application which teaches a dressing insert (20) that can be cut to fit the size and shape of a wound (see Lockwood et al. figures 4 and 6; col. 5, lines 1-10). At the time of the invention, it would have been obvious for one of ordinary skill in the art to provide the wound insert of Henley in any size or shape that corresponds to a wound to which it is to be applied.” See page 7 of the 4/15/08 Office Action.

First of all, Applicants reiterate that the cylindrical shape of the claimed body is a significant change from the thin, rectangular members disclosed by Henley and Lockwood. In particular, a cylindrical shape represents a considerable departure in shape from these prior bandage member configurations. Furthermore, the cylindrical body of the wound insert of claim 13 is provided for use within a long, generally cylindrical wound tunnel, such as wound tunnel 14 of wound 12 shown in FIG. 2 of the present application. Accordingly, a cylindrically-shaped wound insert conforms to the size of the wound tunnel for placement within the wound tunnel. The use of an insert shaped to fit such wound tunnels was not contemplated by the prior art.

While Lockwood discloses a wound dressing member 20 which can be cut to fit the size and shape of a wound, Lockwood does not disclose or suggest that such a thin, flexible, wound dressing member 20 may be cut to form a cylindrical body for placement within wound tunnels. Lockwood does not discuss wound tunnels or the placement of wound inserts within wound tunnels in addition to the use of a wound dressing member coupled to a vacuum source. Henley and Lockwood only disclose the use of a generally flat, rectangular wound dressing

member 20. Further, Lockwood discloses only that the thin, flexible rectangular member 20 may be cut to fit a generally planar wound surface having either an irregular surface area and/or a surface area smaller than that of the member 20 itself. See FIG 6 of Lockwood which illustrates a portion of the member 20 and cover 52 after having been trimmed to fit an irregularly shaped wound of a patient. Lockwood does not disclose or suggest cutting the member 20 to form a cylinder. Accordingly, neither Lockwood nor Henley disclose or suggest the use of a wound insert having “a body made of a generally non-porous flexible material, wherein the body is cylindrical in shape” for use with a wound dressing member coupled to a vacuum source.

Furthermore, cutting the wound dressing member 20 of Lockwood to form a cylinder would destroy the intended purpose and function of the wound dressing member 20. In other words, altering the wound dressing member 20 of Lockwood to form a cylinder would render the wound dressing member 20 of Lockwood inoperable for its intended use. For example, the wound dressing member 20 of Lockwood includes a central vacuum/irrigation port 26, a plurality of radial and concentric channels 28, 30, 32, 34, and through holes 36, all of which cooperate to provide a flow pathway for negative pressure and/or irrigation liquid to be communicated to the wound and for wound exudate be removed from the wound. In other words, the function of the wound dressing member 20 is to communicate negative pressure from the vacuum source 12 and irrigation liquid from the irrigation source 14 through the port 26, the radial and concentric channels 28, 30, 32, 34, and the holes 36 to the wound surface and to then draw wound exudates from the wound surface through the same holes 36, channels 28, 30, 32, 34, and port 26 by negative pressure communicated therethrough. By altering the wound dressing member 20 of Lockwood so significantly as to form a cylinder, most if not all of the port 26, channels 28, 30, 32, 34, and holes 36 would be destroyed. Furthermore, the wound dressing member 20 would be unable to be coupled to the vacuum source 12 and the irrigation source 14 via the vacuum/irrigation tube 13 and would be unable to thusly communicate the negative pressure from the vacuum source 12 and the liquid from the irrigation source 14 to the wound. Accordingly, the proposed modification by the Examiner of the wound dressing member

20 of Lockwood would render the wound dressing member 20 of Lockwood inoperable for its intended purpose. For at least this additional reason, it is not obvious to alter the size and shape of the dressing member 20 of Lockwood to form a cylinder.

As such, withdrawal of the U.S.C. §103(a) rejection of claim 13 based on Henley is respectfully requested.

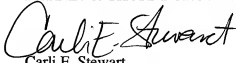
Each of the remaining claims 2, 9-11, 14, 15, 19, 24, 25, 28, and 29 depend either directly or indirectly from one of independent claims 1 and 13 and incorporate all of the limitations of such claims therein. As such, in view of the amendments and arguments set forth above in regards to claims 1 and 13, it is respectfully requested that the rejection of dependent claims 2, 9-11, 14, 15, 19, 24, 25, 28, and 20 be withdrawn. In light of such reasons set forth above for the withdrawal of the rejection of claims 1 and 13, any arguments specific to claims 2, 9-11, 14, 15, 19, 24, 28, and 29 are held in abeyance without prejudice or admission to any assertion made by the Examiner in order to expedite prosecution.

FURTHER ACTION

In view of the foregoing remarks, the subject application is now deemed to be in condition for allowance, and such action is respectfully requested. If there are any questions or comments that would speed prosecution of this application, the Examiner is invited to call the undersigned at (317) 231-7216. It is respectfully requested that if necessary this paper be considered as a petition for a ONE-MONTH extension of time sufficient to effect a timely response and that any extension of time fees, as well as any other fees, be charged to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 with reference to file 7175-71861.

Respectfully submitted,

BARNES & THORNBURG LLP



Carli E. Stewart
Attorney Reg. No. 51,058

Indianapolis, IN
(317) 231-7216
carli.stewart@btlaw.com
INDS02 CYS 994828v1